



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Pacific Ocean off the Pacific Missile Range Facility at Barking Sands, Island of Kauai, Hawaii; danger zone.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending its regulations for the danger zone in waters of the Pacific Ocean off the Pacific Missile Range Facility at Barking Sands, Island of Kauai, Hawaii. The U.S. Navy conducts weapon systems testing and other military testing and training activities at the Pacific Missile Range Facility. The amendment expands the boundaries of the existing danger zone to include an area necessary to protect the public from potential hazards associated with weapon systems testing, other military testing and training activities, and increased threat conditions. Similar to the original danger zone, the expanded danger zone prohibits any activity by the public within the danger zone during range operations, weapon systems testing, other military testing and training activities, increases in force protection and other mission-essential evolutions without first obtaining permission from the Commanding Officer, Pacific Missile Range Facility to ensure public safety and/or installation good order. The expanded danger zone extends along approximately seven miles of shoreline adjacent to the Pacific Missile Range Facility, with its seaward extent ranging between 2.96 and 4.16

nautical miles offshore. Only the portions of the danger zone necessary to safely conduct range operations will be activated.

DATES: Effective date: [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922, or Ms. Susan Meyer, Corps of Engineers, Honolulu District, Regulatory Branch at 808-835-4599 or by e-mail at susan.a.meyer@usace.army.mil.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is amending the regulations at 33 CFR 334.1390 by expanding the boundaries of the existing permanent danger zone in the waters of the Pacific Ocean off the Pacific Missile Range Facility at Barking Sands, Island of Kauai, Hawaii.

The proposed rule was published in the July 1, 2013 issue of the Federal Register (78 FR 39198; docket number COE-2013-0007). Comments and statements were received from nine commenters in response to the Federal Register notice and the Corps of Engineers local Public Notice. The majority of the commenters opposed the expansion of the existing danger zone based on concerns that public access to the beach fronting the Pacific Missile Range Facility and the off-shore waters used by waterborne

recreationalists, such as surfers, boaters, and fishermen, would be further restricted as a result of the amended danger zone.

The expansion of the danger zone boundaries will not increase the frequency with which the danger zone is activated for public safety and military security during range operations, weapon systems testing, other military testing and training activities, increases in force protection, and other mission-essential evolutions. Residents and visitors who typically use these waters off Pacific Missile Range Facility should not see any change in practice; the danger zone will continue to be activated only in limited circumstances and on a temporary basis. The intent of the danger zone is to ensure public access is controlled during the infrequent times of increased force protection, range operations, weapon systems training, and other military testing and training activities to minimize the potential for injury to individuals and property.

In addition, the State of Hawaii, Coastal Zone Management Program commented that the proposed federal action to amend the danger zone is subject to federal consistency review under the Coastal Zone Management Act of 1972 and therefore, requires the U.S. Navy to obtain concurrence from the state that the federal activity is consistent with the policies of the Hawaii Coastal Zone Management Program.

The U.S. Navy prepared a federal consistency determination for the proposed federal action and coordinated the document with the State of Hawaii Coastal Zone Management Program. In a letter dated September 13, 2013, the Hawaii Coastal Zone Management Program office concurred with the U.S. Navy's consistency determination, indicating the proposed activity is consistent to the maximum extent practicable with the enforceable policies of the Hawaii Coastal Zone Management Program.

Procedural Requirements

a. Review under Executive Order 12866.

This final rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review under the Regulatory Flexibility Act.

This final rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps determined that the amendment of this danger zone has practically no economic impact on the public, no anticipated navigational hazard, or interference with existing waterway traffic. This final rule will have no significant economic impact on small entities.

c. Review under the National Environmental Policy Act.

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps determined this amendment to the regulation will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment (EA) was prepared after the public notice period closed and all comments received from the public were considered. The environmental assessment may be viewed at the District office listed at the end of the FOR FURTHER INFORMATION CONTACT section, above.

d. Unfunded Mandates Act.

This final rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. The Corps has also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334 -- DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Revise § 334.1390 to read as follows:

§ 334.1390 Pacific Ocean off the Pacific Missile Range Facility at Barking Sands, Island of Kauai, Hawaii; danger zone.

(a) The danger zone. All navigable waters within an area beginning at a point on the shore at latitude 22°04'13.65"N, longitude 159°46'30.76"W; and continue south along the shoreline to latitude 21°58'42.77"N, and longitude 159°45'26.35"W. Thence extending southwest to latitude 21°56'6.00"N, and longitude 159°46'55.91"W extending northwest to latitude 21°58'59.81"N and longitude 159°50'51.42"W, continuing north to latitude 22°02'28.09"N, and longitude 159°51'28.15"W, and continuing northeast to latitude 22°06' 30.71" N, longitude 159°49'20.43" W; and thence to point of beginning. All coordinates reference 1983 North American Datum (NAD 83).

(b) The regulations. (1) Dredging, dragging, seining, and other similar operations within the danger zone are prohibited.

(2) All persons, boats, vessels, or other craft are prohibited from entering, transiting, or remaining within the danger zone during range operations, test and training activities, or increases in force protection that pose a hazard to the general public, as determined by the enforcing agency. The enforcing agency's determination of the necessity of closing the danger zone due to increases in force protection will be based on the Department of Defense Force Protection Condition (FPCON) System. From the lowest security level to the highest, FPCON levels are titled Normal, Alpha, Bravo, Charlie and Delta.

(3) Closure of the danger zone will be indicated by Notice to Mariners, the presence of Pacific Missile Range Facility range boats, beach markings including beach signs along the north and south beach borders alerting shoreline foot traffic, security patrols, and radio transmissions on common ocean frequencies to include Marine band channel 6 (156.300 Mhz), Marine band channel 16 (156.800 Mhz), and CB channel 22. The enforcing agency will post the danger zone closure schedule on its official Navy website, <http://www.cnic.navy.mil/PMRF/>, and Facebook page, <http://www.facebook.com/PacificMissileRangeFacility>. The danger zone closure schedule may also be obtained by calling the following phone numbers: 808-335-4301, 808-335-4388, and 808-335-4523.

(4) Consistent with paragraph (b)(2) of this section, the enforcing agency is authorized to prohibit access into the danger zone by anyone, and all willful violations of the enforcing agency's prohibitions are punishable under 33 U.S.C. 3.

(c) The enforcing agency. The regulations in this section shall be enforced by the Commanding Officer, Pacific Missile Range Facility, Hawaii and such agencies or persons as he or she may designate.

Dated: December 11, 2013.

Approved: _____

James R. Hannon,

Chief, Operations and Regulatory

Directorate of Civil Works.

[FR Doc. 2013-29878 Filed 12/13/2013 at 8:45 am; Publication Date: 12/16/2013]